

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2038

Bill Subtitle: TO AMEND THE LAW CONCERNING CHILD SUPPORT ORDERED PURSUANT TO A DIVORCE DECREE; AND CONCERNING THE ESTABLISHMENT AND DISESTABLISHMENT OF PATERNITY BEFORE AND AFTER THE ENTRY OF A DIVORCE DECREE.

Basic Change:

Sponsor: Rep. Fielding

HB2038 amends §§ 9-10-108, 9-10-109, and creates new Arkansas Code sections at §§ 9-12-326 and 9-12-327 to permit a man who is or may be ordered to pay child support pursuant to a divorce decree to seek an order for paternity testing and to disestablish paternity of children born during the marriage.

Revenue Impact:

No direct revenue impact is anticipated.

Taxpayer Impact:

Divorced husbands would be permitted to challenge the presumption of paternity of children born to the marriage and for whom they are ordered to provide support. In cases in which the husband was found not to be the father, paternity of the child would be disestablished and the husband's child support obligation would be terminated.

Resources Required:

No significant additional resources are needed.

Time Required:

It is estimated that the necessary revision of OCSE's training materials would be completed within three months following enactment.

Procedural Changes:

The development and revision of training materials for legal and support staff would be required.

Other Comments:

None.

Legal Analysis:

Arkansas case law holds that a divorce decree which adjudicates the paternity of the husband bars the parties from seeking to disestablish paternity of children born to the marriage. *See State of Arkansas, Office of Child Support Enforcement v. Williams*, 338 Ark. 347, 995 S.W.2d 338 (1999).

Under § 9-10-115, a man who has been adjudicated the father of a child born out of wedlock without the benefit of paternity testing may petition the court for an order for testing during the period of time in which he is ordered to pay support. If the order excludes the adjudicated father as the biological father

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of the child, the previous establishment of paternity is set aside, the support obligation is terminated, and any unpaid support owed under the previous order is vacated.

If enacted, HB2038 would permit husbands to challenge the paternity of children born to the marriage during a divorce proceeding as well as following entry of a final decree of divorce if they may be or are ordered to pay support for the children.

The new Code section at § 9-12-326 would address disestablishment of paternity during a divorce proceeding. Under paragraph (a)(1), a man would be entitled to paternity testing if he may be ordered to pay support in the final divorce decree and paternity testing was not previously performed. This paragraph does not grant the mother of the child the same entitlement to testing. Additionally, there is no requirement that the previous test was conducted pursuant to court order under § 9-10-108. This leaves open the possibility of testing using commercially available products.

At paragraph (b), if the man is excluded by the paternity test or the mother acknowledges that the man is not the father of the child, he is not to be required to provide support and the birth certificate is to be amended. Permitting disestablishment of paternity based on agreement or acknowledgement of the parties without the benefit of testing may have the unintended effect of leaving a child with no legal father if the parties were mistaken in their assertion that the husband is not the father of the child.

New Code section Ark. Code Ann. § 9-12-327 would address disestablishment of paternity after entry of a final decree of divorce if the man was ordered to pay support for the child. The language of this section substantially tracks the language of the previous section and the same concerns apply.

At paragraph (c), if testing excludes the husband as the biological father of the child, the previous establishment of paternity is set aside, the support obligation is terminated, and any unpaid support owed under the previous order is vacated. This language is identical to existing § 9-10-115 referenced above.

At paragraph (d), if testing confirms that the husband is the father of the child and there has been a change in circumstances the court may modify the existing order of support. This provision may create a conflict with § 9-14-107 which provides guidance regarding the materiality of a change in circumstances that may form the basis for a modification of a support obligation.